

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARIANA HUEMER, et al.,

Plaintiffs,

v.

SANTA CRUZ COUNTY ANIMAL
SHELTER FOUNDATION, et al.,

Defendants.

Case No. 21-cv-07372-SVK

**ORDER ON PLAINTIFFS' MOTION
FOR LEAVE TO FILE THIRD
AMENDED COMPLAINT**

Re: Dkt. No. 50

Before the Court is the motion of Plaintiffs Ariana Huemer and Eeyore's Hen Harbor for leave to file a Third Amended Complaint. Dkt. 50. The Court finds this matter suitable for determination without oral argument. Civ. L.R. 7-1(b). For the reasons that follow, Plaintiffs' motion is **GRANTED IN PART AND DENIED IN PART**.

Plaintiffs seek to amend the complaint because they have obtained the identities of three veterinarians who were originally named as Doe defendants, all of whom Plaintiffs allege to be "contracted veterinarian employee[s]" of Defendant Santa Cruz Animal Shelter. *Id.*; *see also* Dkt. 50-1 ¶¶ 10-12. The existing Defendants have responded to the motion for leave to amend by stating that they oppose Plaintiffs' inclusion of a *Monell* claim that has been dismissed by the Court, but are otherwise neutral and "leave it for the Court's determination whether Plaintiffs satisfied FRCP 15(a)(2)." Dkt. 55.

In the Court's Order on Defendants' motion to dismiss the Second Amended Complaint, the Court dismissed Plaintiffs' *Monell* claim with prejudice and without leave to amend. Dkt. 40. In their response to the present motion, Defendants assert that Plaintiffs seek to include the dismissed *Monell* claim in the proposed Third Amended Complaint only "for any future appeal." Dkt. 55. Plaintiffs did not file a reply on the present motion or otherwise dispute Defendants' characterization of their reasons for including the *Monell* claim in the Third Amended Complaint.

1 Although the Court finds it appropriate under Rule 15(a)(2) to allow Plaintiffs to amend
2 the complaint to add the identity of Doe defendants, inclusion of the dismissed *Monell* claim is
3 neither necessary nor appropriate. The Ninth Circuit does not require a plaintiff to replead “claims
4 dismissed with prejudice and without leave to amend” in order to preserve them for appeal. *Lacey*
5 *v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012).

6 Accordingly, the Court **GRANTS** Plaintiffs’ motion to file a Third Amended Complaint
7 insofar as it seeks to include the identities of Defendants previously named as Doe Defendants and
8 **DENIES** Plaintiffs’ motion insofar as it seeks to include the now-dismissed *Monell* claim in the
9 Third Amended Complaint. The Court further **ORDERS** as follows:

- 10 1. Plaintiffs must file a Third Amended Complaint that conforms to this Order within
11 **7 days** of the date of the Order.
- 12 2. The existing Defendants must serve a response to the Third Amended Complaint
13 within **14 days of filing**.
- 14 3. Plaintiffs must serve the Third Amended Complaint on the newly-named
15 Defendants within **14 days of filing** the Third Amended Complaint, and those
16 Defendants must file a response to the Third Amended Complaint within **14 days**
17 **of service**.

18 **SO ORDERED.**

19 Dated: March 28, 2023

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22 SUSAN VAN KEULEN
23 United States Magistrate Judge
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